is supported by the affidavit of Dr. Chew Peng Hui, learned counsel for the plaintiff. It is clear from this affidavit that, before the sale mentioned above, the plaintiff had attached the said land by a Prohibitory Order which was registered with the Land and Survey Department. It seems clear from the said affidavit, and that of the 2nd defendant, that, had this been a case where there are more than one attaching judgment creditor, who have not obtained satisfaction of their judgment debt, O.46A, rule 1(1)(c) would have been applicable. The question which falls to be considered is whether O.46A, rule 1(1)(c) covers, or should be construed to cover, the situation, as here, where there is only one judgment creditor who, prior to the sale of the said land, had attached the said land by way of execution. That the said Order and rule recognise the right of rateable distribution where there are more than one attaching judgment creditor is clear. In my view, since there is no other Order or rule expressly covering the instant situation, and having regard to the principle of rateable distribution given recognition by O.46A, rule 1(1)(c), it would seem that it would be fair and reasonable to construe this Order and rule to cover the instant situation where there is only one attaching judgment creditor. This construction, in my view, would be consistent with the principle embodied therein, particularly having regard to the fact that, to construe otherwise would leave the attaching judgment creditor without any provision to fall back on. Accordingly, I would make the order as prayed for. The exact amount to be paid to the plaintiff would be subject to verification of the Assistant Registrar.

Order accordingly.

Solicitors: *Battenberg & Talma.*

YANASENGAM & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Razak J.) January 19, 1978]

[Kuantan — Miscellaneous Criminal Application No. 8 of 1977]

Criminal Law and Procedure — Bail — Cases under the amendment to the Penal Code by the Penal Code (Amendment and Extension) Act, 1975.

This application raised a fundamental question regarding the granting of bail in cases under the amendment to the Penal Code by the Penal Code (Amendment and Extension) Act, 1975 making punishable offences hitherto punishable with life imprisonment with imprisonment extending to 20 years. It was argued that the effect of the amendment was to make the granting of bail in them a matter of course since they were now punishable with imprisonment for a period of 20 years instead.

Held: the nature and seriousness of these offences speak for themselves the necessity that the old rules before the amendment in the application for bail for offences punishable with life imprisonment must continue to apply if the administration of justice is to have any real effect.

CRIMINAL APPLICATION.

Mrs. Fernandez for the appellant.

Harany bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Abdul Razak J.: This is an application for bail for an offence under section 395 of the Penal Code for gang robbery. The application was dismissed but it had raised a fundamental question regarding the granting of bail in cases under the amendment to the Penal Code by the Penal Code (Amendment and Extension) Act, 1975 making punishable offences hitherto punishable with life imprisonment with imprisonment extending to 20 years and I indicated I would deliver a written judgment. Hitherto decided cases have held that in cases punishable with death and life imprisonment bail must not be allowed unless there were very special reasons shown.

The amendment had evoked a controversy as to its effect on the granting of bail in those cases where formerly the offence or offences were punishable with imprisonment for life. In the present application at any rate it was argued that the effect of the amendment was to make the granting of bail in them a matter of course since they are now punishable with imprisonment for a period of 20 years instead. But is this really the intention of the legislature?

The explanatory statement to the Bill states "Except the amendment of section 216, which is for clarification only, these amendments are for the purpose of removing a curious anomaly created by an amendment to the Code by the Criminal Justice Ordinance, 1953, which abolished penal servitude. Penal servitude was a custodial sentence with different attributes from imprisonment. In the result, those sections of the Code providing the punishment of penal servitude for life were amended to read "imprisonment for life". Another section of the Ordinance provided that a sentence of imprisonment for life should be deemed for all purposes to be a sentence of imprisonment for 20 years. Before the 1953 amendment, many sections creating the more serious offences presented the court with the alternative of "penal servitude for life or imprisonment for a term which may extend to 10 years". The amendment created a situation in which the maximum sentence under these sections, although expressed to be "for life", was 20 years, to which there was an alternative sentence not exceeding 10 years. The Federal Court discovered the lacuna, and held that while a court could impose a sentence of 20 years it could not pass any sentence of between 10 and 20 years. To overcome this difficulty it is proposed to make 20 years the maximum prison sentence which can be passed for offences at present punishable with imprisonment for life, and to delete all reference to alternative sentences of imprisonment for life, except for offences under Chapter VI, which are offences in the category of treason. Here the sentence of imprisonment for life remains, with an alternative sentence of imprisonment which may extend to 20 years. This will enable a judge in a case involving extreme danger to the State, to pass a sentence which is defined (new section 130A) to mean imprisonment until the death of the person sentenced, while offering him the alternative, in a less extreme case, of passing a sentence of up to 20 years".

In the context that "imprisonment for life" is still defined as imprisonment for a period of 20 years in the Criminal Justice Act, 1953, the explanatory statement merely bear testimony to the fact, that the amendment was not intended to make the nature of offences

for which they were hitherto treated heinous enough to merit imprisonment for life any less serious now by the amendment by reason of which it is now argued that bail is a matter of course. That would in my mind create an indeed absurd situation seeking to make the present legislative exercise nugatory and self-defeating. Can it seriously be said that such grave offences under the Penal Code as section 194 — falsifying false evidence with intent to convict a person of a capital offence, section 304 — for culpable homicide not amounting to murder, section 449 — for house trepass with intent to commit an offence punishable with death, it is no longer intended by the legislature that the stringent rules which before applied in cases where they were punishable with life imprisonment are now no longer applicable. It seems to me that the nature and seriousness of these offences seem to speak for themselves the necessity that the old rules before the amendment in applications for bail for offences punishable with life imprisonment must continue to apply if the administration of justice is to have any real effect. The real reason behind the amendment is explained by the Bill itself that firstly it was intended to fill a lacuna in the law since under the old provision offences hitherto punishable with life imprisonment or imprisonment for a period not extending 10 years, the court could only imprison a person for life (that is 20 years) or a term not exceeding 10 years giving it therefore no discretion to impose a term which merit punishment for more than 10 years but which was less than 20 years. Thus, in the sense therefore that by the amendment the punishment meted out can now be more than 10 years and that a person can still be imprisoned for 20 years which is still a sentence of life imprisonment as defined in the Criminal Justice Act, 1953, the law has in fact been amended only to emphasise the seriousness of these offences, and also to increase the penalty to meet them. The second reason why I notice the word 'life imprisonment' has been amended to 20 years is to enable a clear distinction being made between offences under Chapter 6 and those in other parts of the Penal Code where the punishment provided for is "imprisonment for life" since in the former as distinguished from the latter it is now found to be necessary to make the provision of "life imprisonment" to endure for the duration of the person's natural life. In that light one cannot but say that the principal governing the grant of bail in cases hitherto punishable with life imprisonment must continue to apply even after the amendment to cases where it is now punishable with imprisonment not extending a period of 20 years.

Dealing with the present application, the three accused are charged with gang robbery under section 395 which before was punishable with life imprisonment but which by the amendment has become 20 years instead. The amount involved is small but the offence was grave enough in my view for special reason to be given by the applicants as to why bail should be granted. The applicants had filed an affidavit in support of their application but the grounds given for bail are no more than the grounds arising from the ordinary consequential effect of granting bail which do not generally merit it being given.

I would therefore dismiss the application.

Application dismissed.

Solicitors: *C.M. Fernandez & Co.*